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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	MM Docket No. 91-221
	)	
Review of the Policy Implications	)	
of the Changing Video Marketplace	)	

COMMENTS OF CAPITAL CITIES/ABC, INC.

Sam Antar
Vice President, Law & Regulation

Kristin C. Gerlach
Senior General Attorney,
Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

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SUMMARY

The Office of Plans and Policy Working Paper which prompted the Commission's inquiry plainly underscores the effect of the profound and irrevocable changes in the video marketplace in the past fifteen years. The enormous increase in media voices and technological advances has introduced unprecedented competition for all market participants. These developments have profound and disturbing implications for the health and strength of our system of free over-the-air television.

Now is the time for the Commission to rededicate itself to the preservation and enhancement of free, over-the-air broadcasting. The Commission should re-examine its regulations and modify or eliminate those that serve to perpetuate artificial and unnecessary restraints on broadcasters' ability to compete. Broadcasters should be free to use their programming expertise and financial resources to provide new, diverse programming services to the public as full competitors with all of the other suppliers of programming.

Regulation is appropriate when it is needed to enforce licensee responsibility or to ensure the performance of functions that free markets cannot and do not perform for the public. The network-cable cross-ownership rule, multiple ownership rules, dual network rules and most of the rules governing the network-affiliate relationship -- cannot be justified in their current form on either ground.

1. <u>The Network-Cable Cross-Ownership Rule</u>

The Commission should permit networks to own cable systems subject to appropriate safeguards. The current rule makes no sense in a competitive multichannel environment in which vertical integration of cable systems and cable program suppliers is commonplace. The potential dangers most commonly attributed to network ownership of cable are either misplaced or overstated. Competition and diversity can be fully preserved by the Commission's adopting appropriate safeguards directly serving these goals, rather than by continuation of a flat ban.

The fear that a network might restrict the services it offered via cable to stifle the growth of cable systems is hopelessly outdated. No company could survive that invested huge sums of money in acquiring cable systems and then put them at risk by curtailing programming. It would be particularly costly and self-defeating for a network to refuse to carry broadcast stations, the most popular channels in cable homes. To the extent there is any residual concern that independent stations need protection, that concern can be dealt with through a rule which would require the network cable owner to carry all local broadcast stations and to afford them channel position safeguards.

The fear that network ownership of cable would influence the network's relationship with its affiliates is equally unfounded. National broadcast networks need a successful partnership with their affiliates in today's video marketplace more than ever. Any threat not to carry an affiliate or to assign it an unfavorable channel position in order to gain advantage in negotiations on program clearance or compensation is simply not credible. In any event, such unlikely network behavior could be adequately protected against by must-carry and channel position restrictions.

The fear that a network might bypass its local affiliate altogether in favor of cable distribution has no particular connection to network ownership of cable and is, in any event, much overblown. If economics supported bypass, one of the major networks would already have made such an arrangement. If the Commission were nevertheless eager to protect against what is extremely unlikely to happen, it could consider imposing a new requirement that a network must maintain an affiliation with an over-the-air broadcaster in markets where the network owns a cable system.

Finally, the fear that the antitrust laws may not be sufficient to protect against undue concentration in the video marketplace does not justify continuation of a flat ban. If the Commission were to determine that the antitrust laws are not sufficient protection in this area, it could simply modify the current ban and prohibit any company owning a network from owning more than, say, ten percent of nationwide cable connections.

2. <u>Multiple Ownership Rules</u>

The Commission should eliminate its national ownership restrictions for broadcast television stations. The rules were established to foster economic competition and diversity of viewpoints. The rapid and far-reaching changes which have expanded the variety and number of program delivery services have mitigated substantially any concerns about limited entry into the video marketplace. The Commission itself, in amending the rules in 1984, recognized that since the most important idea markets are local, elimination of the rules would be unlikely to have an adverse impact on the number of independent viewpoints available to consumers.

The tremendous increase in video outlets even since 1984, coupled with a further reduction in network affiliate audience share during that period, further supports the Commission's conclusion that its diversity and competition goals do not need the protection of the multiple ownership rules.

The Commission has consistently recognized the public interest benefits of economies of scale available through multiple ownership of broadcast stations. There is no reason to expect that these efficiencies would not apply to broader combinations of commonly-owned stations than permitted under current rules. Increasing the current limits would permit broadcasters to take advantage of these efficiencies to improve service to the public.

3. The Dual Network Rule

The Commission should eliminate its ban on dual networking. The rationale for the rules at the time they were adopted fifty years ago was to encourage the growth of additional national networks, to prevent undue concentration of network control, and to encourage program diversity.

The recent emergence of new networks, broadcast and otherwise, makes it clear that existing network organizations do not have the ability to foreclose the entry of new networks. Elimination of the rule would encourage diversity of program service to the public. Even if a network were to simulcast identical programming on multiple channels, the number of video outlets in local markets substantially mitigates any concern about an appreciable decrease in diversity.

4. Network - Affiliation Relationship Rules

We believe that all rules governing the network/affiliate relationship should be reduced to one simple rule: the affiliate must remain free not to carry a network program which it believes to be contrary to the public interest, or to substitute a program of greater local or national importance. Otherwise, all matters affecting terms and conditions of the network/affiliate relationship should be left to private negotiations between the parties. The Commission has a long-standing policy of non-interference in network affiliation decisions and the "private agreements" that flow from those affiliations. Absent a strong public interest reason, it should also refrain from dictating the terms of those private arrangements. To the extent the rules were motivated by concerns that competing suppliers be assured access to what was at one time a very limited number of desirable video outlets, the dramatic expansion in the number of video outlets has substantially eliminated those concerns.

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Comments in response to the Notice of Inquiry in the above-entitled proceeding ("Notice").[1]

I. INTRODUCTION -- THE COMMISSION SHOULD RE-EXAMINE BROADCAST REGULATION IN LIGHT OF CURRENT MARKETPLACE REALITIES.

Capital Cities/ABC is a diversified media company that operates the ABC Television Network and owns eight television broadcast stations. Its interest in this proceeding stems from its belief that government regulation of broadcasting should do as much as necessary -- but no more -- to serve the public interest goals of competition and diversity.

[1] MM Docket No. 91-221, Notice of Inquiry, FCC 91-215 (rel. August 7, 1991).

The Commission's Notice of Inquiry in this Docket comes at a time when the financial health of the network television business has substantially eroded, and broadcasting in general is being severely tested by new and growing competition. The recent Office of Plans and Policy Working Paper,[2] which prompted the Inquiry, plainly underscores the effect of the profound and irrevocable changes in the video marketplace in the past fifteen years. As a result of technological advances, there has been an enormous increase in media voices, which has introduced unprecedented competition for all market participants. American viewers now have available a myriad of choices, and they have been taking advantage of them. The result is the production of more narrowly segmented programming, and accompanying advertiser "targeting" to reach particular demographic groups. Network companies, whose programming has traditionally been designed to appeal to a broad-based audience, and whose audiences have been fragmented, have suffered a substantial decline in viewers and advertising revenue.

Cable operators and other multichannel program providers, which compete with broadcasters for audiences and advertising revenues, have the benefit of a dual revenue stream (advertising revenue and cable subscription revenue).

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[2] Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991) ("OPP Paper").

In contrast, network companies and local broadcasters must finance their programming virtually exclusively from the revenue generated by advertising. While this means that viewers have access to broadcast programming at no charge, it also means broadcasters' revenues are much more precarious and can vary widely from year to year with the strength of the advertising marketplace. More fundamentally, any broadcaster's share of whatever advertising revenue there may be in a particular year is a function of the size of the audience that it can attract. While overall advertising demand may go up and down from year to year, the exodus of audience from watching advertising on free television is irreversible. The permanent, structural changes in the video marketplace identified in the OPP Paper therefore necessarily have profound and disturbing implications for the health and strength of our system of free over-the-air television.

Broadcasters today face formidable challenges that require innovative solutions -- solutions that differ fundamentally from the ways that broadcasters have traditionally done business in this country. Technological advances such as video compression will introduce new competition and increase the options available to broadcasters -- as well as to cable and other program delivery services -- in dealing with the new video marketplace. Regulatory restrictions that may have made good sense in another day, however, will prevent broadcasters from competing effectively through pursuing all of the opportunities that would otherwise be open to them in dealing with this "Brave New World." If broadcasters are to prosper in the new video marketplace, they must be free to use their programming expertise and financial resources to provide new, diverse programming services to the public as full competitors with all of the other suppliers of programming that have come into their own in the past ten years.

Now is the time for the Commission to rededicate itself to the preservation and enhancement of free, over-the-air broadcasting. The statutory mandate to "encourage the larger and more effective use of radio in the public interest"[3] makes it incumbent upon the Commission to review the effect of its regulations, and if "time and changing circumstances reveal that the 'public interest' is not served...," make appropriate changes.[4] In light of the new competitive realities, the Commission should re-examine its regulations and modify or eliminate those that are based on an economic analysis of the world as it once was, that serve to perpetuate artificial and unnecessary restraints on broadcasters' ability to compete.

In particular, the Commission should re-examine the fundamental asymmetry of its regulatory system. Several

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[3] Communications Act of 1934, 47 U.S.C. §303(g) (1991).

[4] NBC v. U.S., 319 U.S. 190, 225 (1943) (affirming Commission authority to adopt the Chain Broadcasting Rules).

significant broadcast regulatory restraints simply do not apply to broadcasters' competitors and cannot be justified in today's environment. For example, ABC, CBS and NBC are the only three companies in the world that are totally prohibited from having ownership interests in cable systems.[5] There is no similar restriction on non-network broadcasters, Hollywood studios, telephone companies, or even foreign corporations. Broadcasters are limited in the number of television stations they can own, thereby denying them opportunities to exploit the efficiencies and economies of scale that would flow from such arrangements. In sharp distinction, a single company could own every single cable system in the United States. Television network companies are prohibited from operating more than one network of television broadcast stations. Cable networks face no analogous restraint, and several of them distribute different programming services on multiple cable channels or have announced plans to do so.[6]

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[5] Pursuant to 47 C.F.R. §76.501(a)(2) of the Commission's rules, a cable system is not permitted to have an ownership interest in any television broadcast station whose predicted Grade B contour overlaps that cable system's service area. While we believe that this rule is likewise ripe for reconsideration, its roots are in Section 613 of the Communications Act of 1934 (47 U.S.C. §533(a) (1991)). Any modification or elimination of this prohibition would therefore require Congressional action. There is no reason to delay re-examination of the network/cable cross-ownership rule, however, while reconsideration of this statutory ban on local broadcast cable ownership is going forward.

[6] See, e.g., "HBO Offers a Look at the Future," Los Angeles Times, September 13, 1991; "MTV Announces Its Move to Multiplexing," Broadcasting, August 5, 1991.

The Notice states several irrefutable facts:

(a) that the environment for television broadcasting is "significantly more competitive than in years past and [is] likely to be even more competitive in the years ahead";[7]

(b) that the dramatic increase in the number of outlets and the availability of programming has led to a "marked[] reduc[tion] [in] the audience shares of the broadcast networks and their affiliates";[8]

(c) that video distribution in the United States has been completely changed through "expansion in the availability and channel capacity of multichannel video service providers, ... increases in cable availability and channel capacity and the development of a market for direct-to-home satellite service";[9]

(d) that a dual revenue stream for "a significant portion of distributors" is "one of the most significant trends in the economics of video distribution" while "the television broadcasting industry ... has almost uniformly derived revenue solely from advertising sales...";[10] and

(e) that, due to satellite program delivery, program services "increasingly are available nationwide

[7] Notice at paragraph 3.

[8] Id. at paragraph 4. The three-network average quarter hour household share of prime-time viewing dropped from 80.4 in 1982-83 (NTI, September through April 1982-83) to 62.4 in 1990-91 (NTI, September through April 1990-91). While these statistics point to reduced audiences (and hence reduced revenues) for the three major networks as a group, the reality is that these networks cannot be viewed as a monolithic entity with a specified share of prime time viewing. The networks are three separate, highly aggressive companies which compete vigorously with each other as well as other video competitors for audience share. The prime time viewing shares of ABC, CBS and NBC respectively were 20.8, 20.5 and 21.1 in 1990-91 (NTI, September through April 1990-91).

[9] Id. at paragraph 6.

[10] Id. at paragraph 9.

rather than on a local or regional basis."[11]

The conclusions to be drawn from these statements are equally irrefutable. Reduced audience share means decreased revenues. As the OPP Paper clearly reveals, the financial underpinnings of the three major networks have been shaken through the diversion of advertising revenue to national syndication, cable and other sources.[12] If the broadcast networks are to survive as a significant force in our video marketplace, some of the shackles that contained them when their situation was more secure must be removed.

Moreover, whatever structural advantage broadcast television networks have enjoyed by virtue of the nationwide coverage of the network-affiliate system has been substantially diluted by new program delivery systems. Today, the presence of satellite dishes at virtually all television stations guarantees access to other national program services. Similarly, 90% of television households now have cable available to them.[13] Each of these provides an alternative to the networks for national program delivery. Similarly, more program sources mean more choice for video outlets, including network broadcast affiliates, leading to decreased network

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[11] Id. at paragraph 11.

[12] E.g., OPP Paper at 118-33.

[13] Id. at 25. While not all of these households subscribe to cable, the potential for a larger subscriber base cannot be discounted in an evaluation of the competition facing television broadcasters.

advantage.

This is a vastly different scenario from what existed when Commission regulation of broadcasting was adopted.[14] The inevitable conclusion is that "network dominance," to the extent that it ever existed, is no more.

We recognize that the Commission's role is not to safeguard the profitability of any commercial venture. The implications of these restrictions go well beyond immediate financial concerns, however. Without the opportunity for broadcasters to compete fully in this new television marketplace, the quality and diversity of the programs they offer will suffer. Decreased revenues may also lead to broadcasters' curtailing the production of local news and public affairs programming.[15] The result will be harmful to broadcasters and, most important, to the viewing public.

The Commission has consistently recognized that competition is preferable to regulation. Competition keeps companies efficient and innovative, and generally results in

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[14] As the Notice indicates, there were three commercial broadcast networks and no cable networks in 1975; there are now four broadcast networks and more than one hundred national and regional cable networks. The number of independent broadcast stations has increased by fifty percent; video cassette recorders appear in more than sixty-nine percent of television households; three percent of television households have home satellite dishes. Notice at paragraph 3. Moreover, virtually all Commission broadcast regulation was adopted several years prior to 1975. For example, as we discuss below, when the Chain Broadcasting rules were applied to television in 1945, there were six broadcast television stations in the country and virtually no cable presence.

[15] OPP Paper at ix.

the most cost effective supply of services demanded by the public. Asymmetrical regulatory constraints work a profound interference with that efficient delivery. Imposing regulation on some competitors but not others in this highly competitive marketplace is fundamentally inconsistent with the Commission's basic policy of relying upon competition to produce the most efficient service:

> An important advantage of competition over regulation is that there is no need to forecast or prejudge which suppliers or which particular methods of supply will best serve the public interest. Different program suppliers compete for customers on the basis of their particular skills and advantages, and success in the marketplace is tied to success in meeting consumer demands. Under otherwise competitive conditions, a regulatory framework that limits the ability of some competitors to compete on the same terms as other competitors introduces a bias into the market process. With this bias, success in the marketplace becomes an artifact of regulation rather than an indicator that the successful competitor is meeting consumer demands efficiently.[16]

We are not opposed to regulation as such. Regulation is appropriate when it is needed to enforce licensee responsibility or to ensure the performance of functions that free markets cannot and do not perform for the public. The rules we discuss below -- the network-cable cross-ownership rules, multiple ownership rules, dual network rules and most of the rules governing the network-affiliate relationship -- cannot be justified in their current form on

[16] Program Exclusivity in the Cable and Broadcast Industries, 64 Rad. Reg. 2d (P&F) 1818, 1822 (1988).

either ground.

II. THE COMMISSION SHOULD PERMIT NETWORKS TO OWN CABLE SYSTEMS, SUBJECT TO APPROPRIATE SAFEGUARDS.[17]

The Commission's ban on common ownership of cable systems and national networks was adopted with scant consideration of the underlying issues in 1970,[18] was outmoded when the Commission instituted proceedings to examine the rule in 1982 and 1988,[19] and today is an anachronism.

Two expert Commission staff analyses have found the ban unnecessary and inappropriate as a means of protecting or enhancing competition and diversity in the supply and

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[17] Many of these arguments appear in Comments of Capital Cities/ABC, Inc. in In the Matter of Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, BC Docket No. 82-434, filed October 24, 1988.

[18] CATV, Second Report and Order, 23 FCC 2d 816 (1970), recon. denied, 39 FCC 2d 377 (1973). The casual and abstract nature of the analysis on which the ban was based has been a subject of repeated comment. See, e.g., 1 Final Report of the Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation at 432-35 (1980) ("New Television Networks"); Further Notice In the Matter of Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, BC Docket No. 82-434, FCC 88-271 (rel. August 4, 1988) ("1988 Cross-Ownership Further Notice") at paragraph 2.

[19] Cross-Ownership Rules, Notice of Proposed Rule Making, 91 FCC 2d 76 (1982) ("1982 Cross-Ownership Notice"); 1988 Cross-Ownership Further Notice.

distribution of video program service.[20] The Department of Justice, charged with the enforcement of the antitrust laws, has concurred.[21] In 1988, the National Telecommunications and Information Administration (NTIA) published a comprehensive analysis of policy issues in video program distribution and cable television that reached the same conclusion.[22] Finally, the OPP Paper concludes that the Commission should eliminate this rule:

> Rules that prevent vertical integration of the major broadcast networks into program production and syndication, despite the fact that their competitors appear to find such integration valuable, also cause broadcasters to operate under a competitive handicap and should be reconsidered. In particular, the Commission should eliminate its broadcast network-cable crossownership ban.[23]

The effect of the discriminatory network-cable cross-ownership ban is to hamper the ability of the networks, and the network-affiliate distribution system, to compete with other players in the video marketplace. As the Commission has

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[20] See 1 New Television Networks at 430-35; K. Gordon, J. Levy and R. Preece (Staff Report, FCC Office of Plans and Policy), FCC Policy on Cable Ownership at 107-25 (1981) ("1981 OPP Report").

[21] Comments of the United States Department of Justice (filed Jan. 21, 1982) on the Staff Report on FCC Cable Ownership Policies ("DOJ Comments on Staff Report"); Comments of the United States Department of Justice (filed Nov. 29, 1982) in Cross-Ownership Rules, CT Docket No. 82-434.

[22] National Telecommunications and Information Administration, Video Program Distribution and Cable Television: Current Policy Issues and Recommendations, NTIA Report No. 88-233 (1988) ("NTIA Report").

[23] OPP Paper at 170-71.

noted, "it is critical that regulations ... not adversely distort the competitive interplay between broadcast networks (and their affiliates) and the newer cable networks (and their affiliates)."[24]

Moreover, continuation of the rule imposes costs on the public. The Commission is well aware of the potential efficiencies that would be associated with network ownership of cable systems. The Office of Policy and Plans concluded back in 1981 that "cable-network crossownership ... could reduce the risk associated with new programming, allow appropriate adjustment to unexpected changes in the market, improve information flows between stages, and perhaps exploit the programming expertise of the network at the local level."[25] In its original Notice in the cable-network cross-ownership proceeding in 1982, the Commission concluded that "the network-cable cross-ownership rules should be eliminated to permit the transfer of technical and marketing knowledge across traditional media lines and to permit market forces to bring out whatever efficiencies are associated with common ownership between the two industries."[26] And, as noted in the Commission's 1988 Cross-Ownership Further Notice, NTIA's 1988 study "found that continuation of the ownership restrictions

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[24] Network Affiliation Contracts (Two-Year Rule), 66 Rad. Reg. 2d (P&F) 190 (1989) ("Two-Year Rule") at paragraph 16.

[25] 1981 OPP Report at 122.

[26] 1982 Cross-Ownership Notice, 91 FCC 2d at 88-89.

may be counterproductive to the public interest, limiting competition for control of local outlets and imposing costs on the public in terms of potential lost efficiencies that might be realized by vertical integration (e.g., using programming units for both cable and broadcast operations)."[27]

The rule makes no sense in a competitive multichannel environment in which vertical integration of cable systems and cable program suppliers is commonplace. Today, multiple system owners ("MSOs") have ownership stakes in 18 of the top 25 national cable video networks, and four of the five top pay cable networks.[28] If such ownership arrangements confer advantages on these programmers, there is no reason to deny such advantages to the broadcast networks who compete with them for audience and revenues.

The potential dangers most commonly attributed to network ownership of cable are: 1) that diversity in programs offered on cable would be reduced because the network cable owner would restrict its nonbroadcast cable services and discriminate against non-affiliated broadcast stations; 2) that the network cable owner would gain undue bargaining power against its affiliates in markets where it owned a local cable system; and 3) that permitting networks to own cable systems

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[27] 1988 Cross-Ownership Further Notice at paragraph 6 (citing NTIA Report at 72-73) (footnote omitted).

[28] Sources: NCTA: Cable TV Developments Vol. 15 No. 56 September 1991; TV Station and Cable Ownership Directory, Fall 1991; TV Fact Book Cable and Services Vol. No. 59, Part 2.

would lead to harmful concentration in the cable business. We show below that each of these concerns is either misplaced or overstated. But even taking them at face value, competition and diversity can be fully preserved by the Commission's adopting appropriate safeguards directly serving these goals, rather than by continuation of a flat ban.

A. The Diversity of Cable Offerings Would Not Diminish If Networks Were Allowed To Own Cable Systems.

The major concern expressed in the proceeding that led to the current rule was that a network might restrict the services it offered via cable, thereby stifling the growth of cable systems and new cable program networks, in order to protect and promote the broadcast network.[29] The explosive growth of cable systems and cable programming services over the past decade has rendered any such concerns hopelessly outdated.[30] No network could hope to deter the development of cable even if it wanted to do so.

It would be economic suicide for any network even to attempt to undermine cable systems or cable program suppliers by purchasing systems and curtailing programming. Current market prices for cable systems amount to some $1,800 per subscriber. This means that for a network to acquire

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[29] See 1981 OPP Report at 107.

[30] See NTIA Report at 72 n.244 (quoting the National Cable Television Association).

systems including even two percent of the fifty-five million cable subscribers nationwide it would have to invest nearly $2 billion. No company would survive that invested such huge sums of money and then put them at risk by curtailing programming in order to promote a network business that in its totality -- nationwide and including all competitors -- is only as large as a small fraction of the cable system universe. In short, if there is any justification today for a continued ban on networks' owning cable systems, it cannot have anything to do with a perceived need to protect the cable industry from the networks.

The same economic self-interest that eliminates any concern that network cable owners would discriminate against cable program suppliers can be relied upon to protect the continued carriage on network-owned cable systems of non-affiliated broadcast stations. It would be particularly costly and self-defeating for a network to refuse to carry broadcast stations. The core of most cable systems' basic service package is over-the-air stations. They are also the most popular channels in cable homes.[31] Having made a significant capital investment in order to acquire the franchise, it would be completely contrary to a network's interest to degrade its cable service in this way. To the extent there is any residual concern that stations, such as

[31] See Exhibit A.

independent stations, need protection, that concern can be dealt with through a rule which would require the network cable owner to carry all local broadcast stations and to afford them channel position safeguards. In our view, such an approach would be far more preferable to a flat cross-ownership ban as a means to ensure diversity and competition.

B. Network Ownership of Cable Need Not Influence the Network's Relationship With Its Affiliates.

In the 1988 proceeding on this rule, the Commission asked "whether network ownership of cable systems in markets where they have affiliated stations may influence the negotiation of affiliation contracts."[32] The apparent concern is that a network might threaten to disaffiliate with an existing outlet, threaten not to carry the station, or assign it an unfavorable channel position, as a means of obtaining affiliate concessions on program clearance, compensation or other matters. Such network behavior is highly unlikely in the current video marketplace, but in any event could be adequately protected against by must-carry and channel position restrictions as discussed above.

Some have suggested, however, that ensuring carriage and channel position is not sufficient to protect the network affiliate against a network cable system owner terminating its relationship with its over-the-air affiliate, bypassing local

[32] 1988 Cross-Ownership Further Notice at paragraph 7.

broadcasters altogether, and distributing network programs directly to its cable system. Needless to say, there are no guarantees for either an affiliate or a network that any particular affiliate relationship will continue past the term of the current affiliation agreement. And, under present Commission rules, a network is free upon termination of its agreement with an affiliate to bypass over-the-air stations in any market and distribute directly to cable systems. If the economics supported such an approach, it would make sense that one of the major networks already would have made arrangements with one or more cable systems for such bypass and to share the profits. A network need not own the cable system to reap the supposed benefits from bypass. But the economics do not support such an approach to distributing network product efficiently and so there is no practical danger of bypass.[33]

The prospects for a network's success in the video marketplace depend in the first instance upon its ability to develop a program service of superior attractiveness to the public and advertisers and to ensure that such programs reach

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[33] The economics do not support such an approach simply because no television market has 100% cable penetration. Bypass would necessitate that a network accept a significant circulation handicap, which can range from 14% to 67%, depending on the market. On a national basis, that handicap would be in excess of 33%. Moreover, since virtually all markets are served by several cable operators, there would be significant transaction costs involved, and ownership of one of several cable systems would not make such a strategy sensible. This lack of efficiency, coupled with the incomplete circulation, would make a bypass strategy foolish.